

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION


UNITED STATES OF AMERICA, EX
REL. MICHAEL N. SWETNAM, JR.,

Plaintiff,

V.

VALLEY BAPTIST HEALTH
SYSTEM and VALLEY BAPTIST
MEDICAL CENTER

Defendants.



CIVIL ACTION NO. 1:08-CV-446

**DEFENDANTS' SUR REPLY TO RELATOR'S RESPONSE AND SUPPLEMENT
TO THEIR MOTION FOR PROTECTION AND MEMORANDUM IN
RESPONSE TO PLAINTIFF'S MOTION TO COMPEL DEFENDANTS TO
PRODUCE DOCUMENTS AND DEPOSITION WITNESSES**

Defendants, Valley Baptist Health System and Valley Baptist Medical Center, file this Sur Reply to Relator's Response and Supplement to their Motion for Protection and Memorandum in Response to Relator's Motion to Compel Defendants to Produce Documents and Deposition Witnesses (Doc. 107) (the "Motion") and in support would show as follows:

I. SUMMARY OF SUR REPLY

1. The Court should deny Relator's Motion because the requested relief is unnecessary for the following reasons:

- a. Defendants have reviewed Relator's request for certain additional documents relating to Defendants' board meetings and have determined that all relevant and responsive documents have been produced and no such documents are being withheld on the basis of attorney-client or work product privileges;
- b. The deposition of Ben McKibbens is set and scheduled for October 21, 2014; and
- c. Defendants have agreed to produce corporate representatives, including Mr. McKibbens, on certain remaining topics identified by Plaintiff subject to the limitations and clarifications Defendants requested.

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II. ARGUMENTS AND AUTHORITIES

A. Standard

2. Defendants re-assert and incorporate by reference the discovery and motion to compel standards in their Motion for Protection and Memorandum in Response to Relator's Motion to Compel Defendants to Produce Documents and Deposition Witnesses.¹

B. Relator's Requested Relief is Unnecessary.

3. In his Reply to Defendants' Motion for Protection and Memorandum in Response to Relator's Motion to Compel Defendants to Produce Documents and Deposition Witnesses, Relator raises three points:

- 1) Defendants have yet to produce to Relator certain pages from minutes of meetings;
- 2) Defendants had not provided to Relator deposition dates for Mr. Ben McKibbons; and
- 3) Defendants have not provided corporate representatives on certain topics.

This Court should deny Relator's Motion to Compel for the following reasons:

- 1) Defendants have produced all relevant pages from the minutes of meetings;
- 2) Defendants have provided Relator with a deposition date for Mr. McKibbens and his deposition is currently set;
- 3) Defendants are working to provide Relator with corporate representative depositions on remaining topics, subject to the limitations and clarifications Defendants noted in their August 25, 2014 letter.

i. Defendants complied with the Federal Rules and have produced all relevant documents to Relator.

4. After a review of Defendants' board meeting minutes, Defendants have determined they have produced all relevant meeting minutes. Therefore, the Court should deny

¹ See FED. R. CIV. P. 26(b)(1); FED. R. CIV. P. 37(a)(3)(B).

Relator's Motion because Defendants have produced all relevant documents. Relator continues to seek additional pages from Defendants' board meeting minutes which have been produced with redactions due to relevance. While Defendants previously objected to the extent the requests sought privileged information, Defendants' review of their documents confirms that no documents have been withheld on the basis of either attorney-client or work product privileges.

5. More importantly, Relator never requested production of meeting minutes.² Nevertheless, Defendants produced board meeting minutes from 1988 to 2004, with certain redactions due to relevance. Relator's request to compel additional meeting minutes should be denied.

ii. Defendants agreed to produce and have scheduled Ben McKibbens for deposition.

6. The Court should deny Relator's Motion as to Relator's request for Mr. McKibben's deposition because Defendants have provided an agreeable deposition date for Mr. McKibbens. In addition, Defendants have agreed to designate Mr. McKibbens as Defendants' corporate representative on certain of the remaining corporate representative deposition topics that Relator seeks, including topics 19, 21, and 23.

iii. Defendants agreed to produce and are working on identifying additional corporate representatives on certain remaining topics.

7. Defendants are in the process of providing deposition dates for other corporate representatives, in addition to Mr. McKibbens, subject to the limitations identified by Defendants in their August 25, 2014 letter. Because Defendants have agreed to provide corporate representatives subject to their limitations and clarifications, Relator's request to compel deposition dates for such corporate representatives should be denied.

² Noteworthy, in his Motion to Compel and his Reply, Relator does not direct this Court to the request where meeting minutes were requested.

III. CONCLUSION AND PRAYER

For the reasons set forth in Defendants' Sur Reply and Supplement to their Motion for Protection and Memorandum in Response to Relator's Motion to Compel Defendants to Produce Documents and Deposition Witnesses, Defendants, Valley Baptist Health System and Valley Baptist Medical Center, respectfully request the Court deny Relator's Motion and grant them protection with respect to the additional documents and information Relator seeks and the limitations and clarifications specified concerning Relator's corporate representative topics. Defendants also request such other and further relief as to which they may be entitled.

[signature on following page]

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via ECF on this the 15th day of October, 2014 to:

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